
SUBSTITUTE HOUSE BILL 2027

State of Washington

55th Legislature

1997 Regular Session

By House Committee on Commerce & Labor (originally sponsored by Representatives Lisk, McMorris, Schoesler, Boldt, Hickel, Honeyford and Zellinsky)

Read first time 03/05/97.

1 AN ACT Relating to travel sales; amending RCW 19.138.040,
2 19.138.100, 19.138.110, 19.138.120, 19.138.140, 19.138.170, 19.138.180,
3 19.138.190, 19.138.200, 19.138.210, 19.138.240, 19.138.250, and
4 19.138.310; adding a new section to chapter 19.138 RCW; adding new
5 sections to chapter 43.131 RCW; and prescribing penalties.

6 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF WASHINGTON:

7 **Sec. 1.** RCW 19.138.040 and 1996 c 180 s 3 are each amended to read
8 as follows:

9 At or prior to the time of full or partial payment for any travel
10 services, the seller of travel shall furnish to the person making the
11 payment a written statement conspicuously setting forth the information
12 contained in subsections (1) through (6) of this section. However, if
13 ~~((the sale of travel services is made over the telephone or by other~~
14 ~~electronic media and payment is made by credit or debit card))~~ payment
15 is made other than in person, the seller of travel shall transmit to
16 the person making the payment the written statement required by this
17 section within three business days of ~~((the consumer's credit or debit~~
18 ~~card authorization))~~ receipt or processing of the payment. The written
19 statement shall contain the following information:

1 (1) The name and business address and telephone number of the
2 seller of travel.

3 (2) The amount paid, the date of such payment, the purpose of the
4 payment made, and an itemized statement of the balance due, if any.

5 (3) The registration number of the seller of travel required by
6 this chapter.

7 (4) The name of the vendor with whom the seller of travel has
8 contracted to provide travel arrangements for a consumer and all
9 pertinent information relating to the travel as known by the seller of
10 travel at the time of booking. The seller of travel will make known
11 further details as soon as received from the vendor. All information
12 will be provided with final documentation.

13 (5) (~~The conditions, if any, upon which the contract between the~~
14 ~~seller of travel and the passenger may be canceled, and the rights and~~
15 ~~obligations of all parties in the event of cancellation.~~) An advisory
16 regarding the penalties that would be charged in the event of a
17 cancellation or change by the customer. This may contain either: (a)
18 The specific amount of cancellation and change penalties; or (b) the
19 following statement: "Cancellation and change penalties apply to these
20 arrangements. Details will be provided upon request."

21 (6) A statement in eight-point boldface type in substantially the
22 following form:

23 "If transportation or other services are canceled by the seller of
24 travel, all sums paid to the seller of travel for services not
25 performed in accordance with the contract between the seller of travel
26 and the purchaser will be refunded within thirty days of receiving the
27 funds from the vendor with whom the services were arranged, or if the
28 funds were not sent to the vendor, the funds shall be returned within
29 fourteen days after cancellation by the seller of travel to the
30 purchaser unless the purchaser requests the seller of travel to apply
31 the money to another travel product and/or date."

32 **Sec. 2.** RCW 19.138.100 and 1996 c 180 s 4 are each amended to read
33 as follows:

34 No person, firm, or corporation may act or hold itself out as a
35 seller of travel unless, prior to engaging in the business of selling
36 or advertising to sell travel services, the person, firm, or
37 corporation registers with the director under this chapter and rules
38 adopted under this chapter.

1 (1) The registration number must be conspicuously posted in the
2 place of business and must be included in all advertisements. (~~Any~~
3 ~~corporation which issues a class of equity securities registered under~~
4 ~~section 12 of the securities exchange act of 1934, and any subsidiary,~~
5 ~~the majority of voting stock of which is owned by such corporation~~
6 ~~including any wholly owned subsidiary of such corporation are not~~
7 ~~required to include company registration numbers in advertisements.))
8 Sellers of travel are not required to include registration numbers on
9 institutional advertising. For the purposes of this subsection,
10 "institutional advertising" is advertising that does not include prices
11 or dates for travel services.~~

12 (2) (~~The director shall issue duplicate registrations upon payment~~
13 ~~of a nominal duplicate registration fee to valid registration holders~~
14 ~~operating more than one office.)) Separate offices or business
15 locations with two or more employees must be individually registered
16 under this chapter.~~

17 (3) No registration is assignable or transferable.

18 (4) If a registered seller of travel sells his or her business,
19 when the new owner becomes responsible for the business, the new owner
20 must comply with all provisions of this chapter, including
21 registration.

22 (5) If a seller of travel is employed by or under contract as an
23 independent contractor or an outside agent of a seller of travel who is
24 registered under this chapter, the employee, independent contractor, or
25 outside agent need not also be registered if:

26 (a) The employee, independent contractor, or outside agent is
27 conducting business as a seller of travel in the name of and under the
28 registration of the registered seller of travel; and

29 (b) All money received for travel services by the employee,
30 independent contractor, or outside agent is collected in the name of
31 the registered seller of travel and (~~deposited directly into~~)
32 processed by the registered seller of (~~travel's trust account~~) travel
33 as required under this chapter.

34 **Sec. 3.** RCW 19.138.110 and 1996 c 180 s 5 are each amended to read
35 as follows:

36 An application for registration as a seller of travel shall be
37 submitted in the form prescribed by rule by the director, and shall
38 contain but not be limited to the following:

1 (1) The name, address, and telephone number of the seller of
2 travel;

3 (2) Proof that the seller of travel holds a valid business license
4 in the state of its principal state of business;

5 (3) A registration fee in an amount (~~determined under RCW~~
6 ~~43.24.086~~) not to exceed one hundred dollars;

7 (4) The names, business addresses, and business phone numbers of
8 all employees, independent contractors, or outside agents who sell
9 travel and are covered by the seller of travel's registration(~~. This~~
10 ~~subsection shall not apply to the out-of-state employees of a~~
11 ~~corporation that issues a class of equity securities registered under~~
12 ~~section 12 of the securities exchange act of 1934, and any subsidiary,~~
13 ~~the majority of voting stock of which is owned by the corporation));~~
14 and

15 (5) For those sellers of travel required to maintain a trust
16 account under RCW 19.138.140, a report prepared and signed by a bank
17 officer, licensed public accountant, or certified public accountant or
18 other report, approved by the director, that verifies that the seller
19 of travel maintains a trust account at a federally insured financial
20 institution located in Washington state, or other approved account, the
21 location and number of that trust account or other approved account,
22 and verifying that the account (~~exists as~~) required by RCW 19.138.140
23 exists. The director, by rule, may permit alternatives to the report
24 that provides for at least the same level of verification.

25 **Sec. 4.** RCW 19.138.120 and 1994 c 237 s 5 are each amended to read
26 as follows:

27 (1) Each seller of travel shall renew its registration on or before
28 July 1 of every (~~other~~) year or as otherwise determined by the
29 director.

30 (2) Renewal of a registration is subject to the same provisions
31 covering issuance, suspension, and revocation of a registration
32 originally issued.

33 (3) The director may refuse to renew a registration for any of the
34 grounds set out under RCW 19.138.130, and where the past conduct of the
35 applicant affords reasonable grounds for belief that the applicant will
36 not carry out the applicant's duties in accordance with law and with
37 integrity and honesty. The director shall promptly notify the
38 applicant in writing by certified mail of its intent to refuse to renew

1 the registration. The registrant may, within twenty-one days after
2 receipt of that notice or intent, request a hearing on the refusal.
3 The director may permit the registrant to honor commitments already
4 made to its customers, but no new commitments may be incurred, unless
5 the director is satisfied that all new commitments are completely
6 bonded or secured to insure that the general public is protected from
7 loss of money paid to the registrant. It is the responsibility of the
8 registrant to contest the decision regarding conditions imposed or
9 registration denied through the process established by the
10 administrative procedure act, chapter 34.05 RCW.

11 **Sec. 5.** RCW 19.138.140 and 1996 c 180 s 7 are each amended to read
12 as follows:

13 (1) A seller of travel shall deposit in a trust account maintained
14 in a federally insured financial institution located in Washington
15 state, or other account approved by the director, all sums held for
16 more than five business days that are received from a person or entity,
17 for retail travel services offered by the seller of travel. This
18 subsection does not apply to travel services sold by a seller of
19 travel, when payments for the travel services are made through the
20 airlines reporting corporation (~~either by cash or credit or debit card~~
21 ~~sale~~)).

22 (2) The trust account or other approved account required by this
23 section shall be established and maintained for the benefit of any
24 person or entity paying money to the seller of travel. The seller of
25 travel shall not in any manner encumber the amounts in trust and shall
26 not withdraw money from the account except the following amounts may be
27 withdrawn at any time:

28 (a) Partial or full payment for travel services to the entity
29 directly providing the travel service;

30 (b) Refunds as required by this chapter;

31 (c) The amount of the sales commission;

32 (d) Interest earned and credited to the trust account or other
33 approved account;

34 (e) Remaining funds of a purchaser once all travel services have
35 been provided or once tickets or other similar documentation binding
36 upon the ultimate provider of the travel services have been provided;

37 or

1 (f) Reimbursement to the seller of travel for agency operating
2 funds that are advanced for a customer's travel services.

3 (3) At the time of registration, the seller of travel shall file
4 with the department the account number and the name of the financial
5 institution at which the trust account or other approved account is
6 held as set forth in RCW 19.138.110. The seller of travel shall notify
7 the department of any change in the account number or location within
8 one business day of the change.

9 (4) The director, by rule, may allow for the use of other types of
10 funds or accounts only if the protection for consumers is no less than
11 that provided by this section.

12 (5) The seller of travel need not comply with the requirements of
13 this section if all of the following apply, except as exempted in
14 subsection (1) of this section:

15 (a) The payment is made by credit card;

16 (b) The seller of travel does not deposit, negotiate, or factor the
17 credit card charge or otherwise seek to obtain payment of the credit
18 card charge to any account over which the seller of travel has any
19 control; and

20 (c) If the charge includes transportation, the carrier that is to
21 provide the transportation processes the credit card charge, or if the
22 charge is only for services, the provider of services processes the
23 credit card charges.

24 (6) The seller of travel need not maintain a trust account nor
25 comply with the trust account provisions of this section if the seller
26 of travel:

27 (a)(i) Files and maintains a surety bond approved by the director
28 in an amount of not less than ten thousand nor more than fifty thousand
29 dollars, as determined by the director based on the volume of business
30 conducted by the seller of travel during the prior year. The bond
31 shall be executed by the applicant as obligor and by a surety company
32 authorized to do business in this state.

33 (ii) The bond must run to the state of Washington as obligee, and
34 must run to the benefit of the state and any person or persons who
35 suffer loss by reason of the seller of travel's violation of this
36 chapter or a rule adopted under this chapter.

37 (iii) The bond must be conditioned that the seller of travel will
38 faithfully conform to and abide by this chapter and all rules adopted
39 under this chapter, and shall reimburse all persons who suffer loss by

1 reason of a violation of this chapter or a rule adopted under this
2 chapter.

3 (iv) The bond must be continuous and may be canceled by the surety
4 upon the surety giving written notice to the director of the surety's
5 intent to cancel the bond. The cancellation is effective thirty days
6 after the notice is received by the director.

7 (v) The applicant may obtain the bond directly from the surety or
8 through a camp bonding arrangement involving a professional
9 organization comprised of sellers of travel if the arrangement provides
10 at least as much coverage as is required under this subsection.

11 (vi) In lieu of a surety bond, the applicant may, upon approval by
12 the director, file with the director a certificate of deposit, an
13 irrevocable letter of credit, or such other instrument as is approved
14 by the director by rule, drawn in favor of the director for an amount
15 equal to the required bond.

16 (vii) A person injured by a violation of this chapter may bring an
17 action against the surety bond or approved alternative of the seller of
18 travel who committed the violation or who employed the seller of travel
19 who committed the violation; or

20 (b) Is a member in good standing in a professional association,
21 such as the United States tour operators association or national tour
22 association, that is approved by the director and that provides a
23 minimum of one million dollars in errors and professional liability
24 insurance or provides a surety bond or equivalent protection in an
25 amount of at least two hundred fifty thousand dollars for its member
26 companies.

27 (7) If the seller of travel maintains its principal place of
28 business in another state and maintains a trust account or other
29 approved account in that state consistent with the requirement of this
30 section, and if that seller of travel has transacted business within
31 the state of Washington in an amount exceeding five million dollars for
32 the preceding year, the out-of-state trust account or other approved
33 account may be substituted for the in-state account required under this
34 section.

35 **Sec. 6.** RCW 19.138.170 and 1994 c 237 s 13 are each amended to
36 read as follows:

37 The director has the following powers and duties:

1 (1) To adopt, amend, and repeal rules to carry out the ((purposes))
2 registration and trust account provisions of this chapter;
3 (2) To issue and renew registrations under this chapter and to deny
4 or refuse to renew for failure to comply with this chapter;
5 (3) To suspend or revoke a registration for a violation of this
6 chapter;
7 (4) To establish fees not exceeding one hundred dollars; and
8 (5) ((Upon receipt of a complaint, to inspect and audit the books
9 and records of a seller of travel. The seller of travel shall
10 immediately make available to the director those books and records as
11 may be requested at the seller of travel's place of business or at a
12 location designated by the director. For that purpose, the director
13 shall have full and free access to the office and places of business of
14 the seller of travel during regular business hours; and
15 (6))) To do all things necessary to carry out the functions,
16 powers, and duties set forth in this chapter.

17 **Sec. 7.** RCW 19.138.180 and 1994 c 237 s 15 are each amended to
18 read as follows:

19 The director, in the director's discretion, may((÷
20 (1) ~~Annually, or more frequently,~~) upon receipt of a complaint
21 make public or private investigations within or without this state as
22 the director deems necessary to determine whether a registration should
23 be granted, denied, revoked, or suspended((, or whether a person has
24 violated or is about to violate this chapter or a rule adopted or order
25 issued under this chapter, or to aid in the enforcement of this chapter
26 or in the prescribing of rules and forms of this chapter;
27 (2) ~~Publish information concerning a violation of this chapter or~~
28 ~~a rule adopted or order issued under this chapter;~~ and
29 (3) ~~Investigate complaints concerning practices by sellers of~~
30 ~~travel for which registration is required by this chapter)).~~

31 NEW SECTION. **Sec. 8.** A new section is added to chapter 19.138 RCW
32 to read as follows:

33 (1) For the purposes of this chapter, the attorney general has the
34 following powers and duties:

35 (a) Upon receipt of a complaint, to inspect and audit the books and
36 records of a seller of travel. The seller of travel shall immediately
37 make available to the attorney general those books and records as may

1 be requested at the seller of travel's place of business or at a
2 location designated by the attorney general. For that purpose, the
3 seller of travel shall provide to the attorney general full and free
4 access to the office and places of business of the seller of travel
5 during regular business hours;

6 (b) To do all things necessary to carry out the functions, powers,
7 and duties set forth in this chapter;

8 (c) Upon receipt of a complaint, to investigate whether a person
9 has violated or is about to violate this chapter or a rule adopted or
10 order issued under this chapter, or to aid in the enforcement of this
11 chapter or in the prescribing of rules and forms of this chapter;

12 (d) To publish information concerning a violation of this chapter
13 or a rule adopted or order issued under this chapter; and

14 (e) To investigate complaints concerning practices by sellers of
15 travel for which registration is required by this chapter.

16 (2) For the purpose of an investigation or proceeding under this
17 chapter, the attorney general or any officer designated by the attorney
18 general may administer oaths, subpoena witnesses, compel witnesses'
19 attendance, take evidence, and require the production of any books,
20 papers, correspondence, memoranda, agreements, or other documents or
21 records that the attorney general deems relevant or material to the
22 inquiry.

23 **Sec. 9.** RCW 19.138.190 and 1994 c 237 s 16 are each amended to
24 read as follows:

25 For the purpose of an investigation or proceeding under this
26 chapter, the ((director)) attorney general or any officer designated by
27 the ((director)) attorney general may administer oaths and
28 affirmations, subpoena witnesses, compel their attendance, take
29 evidence, and require the production of any books, papers,
30 correspondence, memoranda, agreements, or other documents or records
31 which the ((director)) attorney general deems relevant or material to
32 the inquiry.

33 **Sec. 10.** RCW 19.138.200 and 1994 c 237 s 20 are each amended to
34 read as follows:

35 The ((director)) attorney general or individuals acting on the
36 ((director's)) attorney general's behalf are immune from suit in any
37 action, civil or criminal, based on disciplinary proceedings or other

1 official acts performed in the course of their duties in the
2 administration and enforcement of this chapter.

3 **Sec. 11.** RCW 19.138.210 and 1994 c 237 s 17 are each amended to
4 read as follows:

5 If it appears to the ((~~director~~)) attorney general that a person
6 has engaged in an act or practice constituting a violation of this
7 chapter or a rule adopted or order issued under this chapter, the
8 ((~~director~~)) attorney general may, in the ((~~director's~~)) attorney
9 general's discretion, issue an order directing the person to cease and
10 desist from continuing the act or practice. Reasonable notice of an
11 opportunity for a hearing shall be given. The ((~~director~~)) attorney
12 general may issue a temporary order pending the hearing, which shall
13 remain in effect until ten days after the hearing is held and which
14 shall become final if the person to whom the notice is addressed does
15 not request a hearing within fifteen days after the receipt of the
16 notice.

17 **Sec. 12.** RCW 19.138.240 and 1994 c 237 s 21 are each amended to
18 read as follows:

19 (1) The ((~~director~~)) attorney general may assess against a person
20 or organization that violates this chapter, or a rule adopted under
21 this chapter, a civil penalty of not more than one thousand dollars for
22 each violation.

23 (2) The person or organization shall be afforded the opportunity
24 for a hearing, upon request made to the ((~~director~~)) attorney general
25 within thirty days after the date of issuance of the notice of
26 assessment. The hearing shall be conducted in accordance with chapter
27 34.05 RCW.

28 (3) A civil penalty shall be imposed by the court for each
29 violation of this chapter in an amount not less than five hundred
30 dollars nor more than two thousand dollars per violation.

31 (4) If a person fails to pay an assessment after it has become a
32 final and unappealable order, or after the court has entered final
33 judgment in favor of the state, the ((~~director~~)) attorney general may
34 recover the amount assessed by action in the appropriate superior
35 court. In the action, the validity and appropriateness of the final
36 order imposing the penalty shall not be subject to review.

1 **Sec. 13.** RCW 19.138.250 and 1994 c 237 s 22 are each amended to
2 read as follows:

3 The ((director)) attorney general may assess against a person or
4 organization that violates this chapter, or a rule adopted under this
5 chapter, the full amount of restitution as may be necessary to restore
6 to a person an interest in money or property, real or personal, that
7 may have been acquired by means of an act prohibited by or in violation
8 of this chapter.

9 **Sec. 14.** RCW 19.138.310 and 1994 c 237 s 26 are each amended to
10 read as follows:

11 All information, documents, and reports filed with the director or
12 the attorney general under this chapter are matters of public record
13 and shall be open to public inspection, subject to reasonable
14 regulation. The director or the attorney general may make public, on
15 a periodic or other basis, the information as may be necessary or
16 appropriate in the public interest concerning the registration,
17 reports, and information filed with the director or the attorney
18 general or any other matters to the administration and enforcement of
19 this chapter.

20 NEW SECTION. **Sec. 15.** A new section is added to chapter 43.131
21 RCW to read as follows:

22 The sellers of travel regulatory program shall be terminated June
23 30, 2001, as provided in section 16 of this act.

24 NEW SECTION. **Sec. 16.** A new section is added to chapter 43.131
25 RCW to read as follows:

26 The following acts or parts of acts, as now existing or hereafter
27 amended, are each repealed, effective June 30, 2002:

- 28 (1) RCW 19.138.010 and 1994 c 237 s 1 & 1986 c 283 s 1;
29 (2) RCW 19.138.021 and 1996 c 180 s 1 & 1994 c 237 s 2;
30 (3) RCW 19.138.030 and 1996 c 180 s 2, 1994 c 237 s 10, & 1986 c
31 283 s 3;
32 (4) RCW 19.138.040 and 1997 c . . . s 1 (section 1 of this act),
33 1996 c 180 s 3, 1994 c 237 s 11, & 1986 c 283 s 4;
34 (5) RCW 19.138.050 and 1994 c 237 s 12 & 1986 c 283 s 5;
35 (6) RCW 19.138.090 and 1986 c 283 s 9;

- 1 (7) RCW 19.138.100 and 1997 c . . . s 2 (section 2 of this act),
2 1996 c 180 s 4, & 1994 c 237 s 3;
- 3 (8) RCW 19.138.110 and 1997 c . . . s 3 (section 3 of this act),
4 1996 c 180 s 5, & 1994 c 237 s 4;
- 5 (9) RCW 19.138.120 and 1997 c . . . s 4 (section 4 of this act) &
6 1994 c 237 s 5;
- 7 (10) RCW 19.138.130 and 1996 c 180 s 6 & 1994 c 237 s 6;
- 8 (11) RCW 19.138.140 and 1997 c . . . s 5 (section 5 of this act),
9 1996 c 180 s 7, & 1994 c 237 s 8;
- 10 (12) RCW 19.138.150 and 1994 c 237 s 9;
- 11 (13) RCW 19.138.160 and 1994 c 237 s 14;
- 12 (14) RCW 19.138.170 and 1997 c . . . s 6 (section 6 of this act) &
13 1994 c 237 s 13;
- 14 (15) RCW 19.138.1701 and 1994 c 237 s 30;
- 15 (16) RCW 19.138.180 and 1994 c 237 s 15;
- 16 (17) RCW 19.138.190 and 1994 c 237 s 16;
- 17 (18) RCW 19.138.200 and 1994 c 237 s 20;
- 18 (19) RCW 19.138.210 and 1994 c 237 s 17;
- 19 (20) RCW 19.138.220 and 1994 c 237 s 18;
- 20 (21) RCW 19.138.230 and 1994 c 237 s 19;
- 21 (22) RCW 19.138.240 and 1994 c 237 s 21;
- 22 (23) RCW 19.138.250 and 1994 c 237 s 22;
- 23 (24) RCW 19.138.260 and 1994 c 237 s 23;
- 24 (25) RCW 19.138.270 and 1994 c 237 s 24;
- 25 (26) RCW 19.138.280 and 1994 c 237 s 28;
- 26 (27) RCW 19.138.290 and 1994 c 237 s 27;
- 27 (28) RCW 19.138.300 and 1994 c 237 s 25;
- 28 (29) RCW 19.138.310 and 1994 c 237 s 26;
- 29 (30) RCW 19.138.900 and 1986 c 283 s 11;
- 30 (31) RCW 19.138.901 and 1986 c 283 s 12;
- 31 (32) RCW 19.138.902 and 1994 c 237 s 32;
- 32 (33) RCW 19.138.903 and 1994 c 237 s 33; and
- 33 (34) RCW 19.138.904 and 1994 c 237 s 35.

34 NEW SECTION. **Sec. 17.** If any provision of this act or its
35 application to any person or circumstance is held invalid, the

1 remainder of the act or the application of the provision to other
2 persons or circumstances is not affected.

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